



Docket No. CDC-2008-0001
Division of Global Migration and Quarantine
Centers of Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: 42 CFR Part 34 NPRM Comments
1600 Clifton road, NE., MS E-03
Atlanta, Georgia 30333

July 23rd 2009

RE: Docket No. CDC-2008-0001

Gay Men's Health Crisis (GMHC) is a not-for-profit, volunteer-supported and community-based organization committed to national leadership in the fight against AIDS. We provide prevention and care services to more than 15,000 men, women and families that are living with, or affected by, HIV/AIDS in New York City, and advocate for scientific, evidence-based public health solutions for hundreds of thousands worldwide. GMHC fights to end the AIDS epidemic and uplift the lives of all affected and has long advocated for the removal of the discriminatory United States' HIV travel and immigration ban as a founding member of the Lift the Bar Coalition.

Dear Sir/Madam:

We at Gay Men's Health Crisis (GMHC) urge the prompt implementation of the proposed revision to 42 CFR Part 34, a regulation that will remove Human Immunodeficiency Virus (HIV) from the definition of "communicable diseases of public health significance." Finalization of this proposed rule in the Federal Register is urgent, as the current U.S. travel and immigration ban for persons infected with HIV does significant harm to the efforts of HIV prevention, both at home and abroad.

In 1986, during the height of the AIDS scare and prior to recent developments in medical and epidemiological principles, the CDC and the Department of Health and Human Services (HHS) proposed to include acquired immunodeficiency syndrome (AIDS) as a dangerous contagious disease. Concurrently, CDC/HHS also proposed to substitute HIV infection for AIDS. Since the current rule's implementation in 1987, public health experts agree that the bar has stopped the spread of HIV, and ultimately perpetuates further HIV transmission. The current regulation, by barring the entry of HIV-positive non-citizens into the U.S. and/or disallowing these persons to become permanent legal residents, serves as a disincentive for immigrants to get tested, diagnosed, and into treatment.

Scientific and medical knowledge surrounding HIV transmission has evolved. While the CDC correctly acknowledges that HIV infection is a serious health condition, this proposed amended regulation also recognizes the advances in medicine and the study of HIV that show transmission is not spread casually. Additionally, experts in infectious disease and public health, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), affirm recommendations from the CDC that "HIV/AIDS should not be considered a condition that poses a threat to public health in relation to travel because, although infectious, the virus cannot be transmitted by the mere

presence of a person with HIV in a country or by casual contact.” There is no evidence that entry restrictions have a significant effect on the prevention of HIV transmission. Again, in proposing the new rule the CDC rightly points out that, “the rationale for maintaining HIV infection as an excludable condition is no longer valid based on current medical knowledge and public health practice, scientific knowledge, and experience which has informed us on the characteristics of the virus, the modes of transmission of HIV and the effective interventions to prevent further spread of the virus.”

The United States’ HIV travel bar, and compulsory HIV testing for certain lawful permanent residence applicants, is an affront to human dignity, and violates the rights of equal protection, non-discrimination, privacy and freedom of movement—rights which the United States has long defended in the international arena. Currently, the U.S. is only one of twelve nations world-wide that has an HIV travel bar. Passage of this new regulation would finally remove the U.S. from this list and place us within the mainstream of appropriate international public health policy and practice.

People living with HIV/AIDS have the right to full enjoyment of their human rights, including the right to privacy, confidentiality and protection from stigma and discrimination. HIV-related travel restrictions infringe upon these and other human rights in multiple ways. The U.S. Citizenship and Immigration Services (USCIS) currently conducts the largest mandatory HIV-testing program in the world. Every applicant for permanent residence over the age of 15 undergoes HIV testing, and largely without informed consent. In many instances these mandatory tests are done without appropriate pre- and post-test counseling or safeguards of confidentiality. Any HIV testing should be done voluntarily and on the basis of informed consent.

The personal impact of HIV-related travel restrictions can be devastating for the individual seeking to immigrate, to gain asylum, to visit family, to attend meetings, to study, or to do business. The person affected may simultaneously learn that s/he is infected with HIV, that s/he may not be allowed to travel, and possibly that his/her status has become known to government officials, or to family, community, and employers. This could possibly expose the individual to serious discrimination and stigmatization because of their health status. These HIV travel restrictions have a profound impact upon the discrimination experienced by the lesbian, gay, bisexual and transgendered people as well. HIV-related discrimination and stigma deters people (nationals and non-nationals alike) from getting tested for HIV and utilizing HIV prevention and care services.

The myth of the HIV-infected immigrant stymies HIV prevention efforts. Studies based on the experiences of HIV positive people traveling to the U.S. have shown that the current policy is not effective in the effort to keep HIV positive immigrants out. These studies also conclude that many immigrants become infected with HIV after entering the U.S. and not in their home countries. The CDC has also acknowledged this trend by noting that most immigrants to the U.S. have a better health status than their U.S. counterparts, another signal that the current regulation is outdated and ineffective.

These restrictive policies are counterproductive to public health safety by pushing the issue underground, as many choose to lie about their status rather than risk being turned away. The fear of getting caught at the border with HIV medication in their luggage may actually lead people with HIV to discontinue use of their medication while traveling. Such interruptions of treatment increase the chances of developing new or further viral mutations, which can lead to drug resistant strains of HIV that run risks of possible treatment failure.

Data from the New York City Department of Health and Mental Hygiene for the period 2001-2006 show that foreign born New Yorkers are less likely than U.S. born New Yorkers to be tested for HIV (29% vs. 32%). Additionally, foreign born New Yorkers are almost 50% more likely than U.S. born New Yorkers to be dually diagnosed with HIV and AIDS (32% vs. 24%). These data indicate that foreign born New Yorkers get diagnosed later than U.S. born New Yorkers. These striking disparities are at least in part due to the U.S. HIV entry ban.

Current policy mandates HIV testing for certain people attempting to obtain legal permanent residence. This is in direct opposition to the UN International Guidelines for HIV/AIDS and Human Rights. Further, these tests are often carried out with complete disregard for the immigrants' health. There are often no referral services to care and treatment. Potential immigrants are left with the news that they have HIV and no support system to help. Beyond the lack of health support, these mandatory testing programs miss out on the very real opportunity for HIV prevention education. Very little is done to ensure that those tested are provided with the necessary tools and support to not transmit this virus to others.

The adoption of the proposed rule to take HIV out of the definition of "communicable diseases of public health significance" and also remove HIV from the scope of immigrant medical examinations is a much needed change in U.S. public health policy and immigration law. The new rule will put the U.S. within the arena of current international medical and epidemiologic practices and beliefs and significantly improve HIV prevention efforts and HIV care outcomes in the United States. For the above reasons GMHC strongly urges the implementation of the CDC's proposed rule to lift the HIV travel and immigration bar.

Chief Executive Officer
Gay Men's Health Crisis